



January 15, 1996

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VIA HAND DELIVERY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

RECEIVED  
JAN 16 1996  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY


Re: Reply Comments of GO Communications Corporation on  
Microwave Relocation, WT Docket No. 95-157

Dear Mr. Caton:

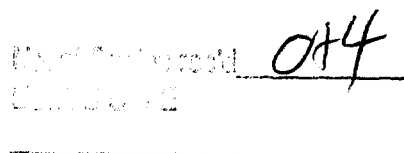
Enclosed please find for filing an original and four copies of GO Communications Corporation's reply comments on the FCC's Notice of Proposed Rulemaking on Amendment to the Commission's Rules for Sharing the Costs of Microwave Relocation (WT Docket No. 95-157), released October 13, 1995. We have also enclosed a file copy which should be stamped and returned to the courier.

If you have any questions regarding this filing, please contact the undersigned at (703) 518-4302.

Sincerely,

  
Leo R. Fitzsimon

Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED  
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In the Matter of )  
Amendment to the Commission's Rules )  
Regarding a Plan for Sharing )  
the Costs of Microwave Relocation )

WT Docket No. 95-157

RM-8642

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**REPLY COMMENTS OF GO COMMUNICATIONS CORPORATION  
CONCERNING MICROWAVE RELOCATION**

GO Communications Corporation ("GO") hereby submits its reply comments regarding the Federal Communications Commission's (the "Commission") *Notice of Proposed Rulemaking*, WT Docket No. 95-157 (October 12, 1995) ("NPRM") in this proceeding.

GO notes that nearly all commenters generally support the Commission's cost sharing proposal. PCS licensees, potential C block PCS licensees and microwave incumbents all agree that the expedient, efficient and fair relocation of existing microwave links is in the best interests of all parties involved.<sup>1</sup> After reviewing various parties' comments in this proceeding, GO reiterates its contention that the Commission must ensure that microwave relocation is accomplished in a manner which is fair to all parties involved and which protects the interests of parties like GO who have no input in the initial relocation agreements between PCS licensees and microwave incumbents.

GO urges the Commission to keep in mind the tremendous advantage enjoyed by the A and B block licensees of having the ability to be first to market in the highly competitive PCS

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<sup>1</sup> Comments of Southern California Gas Company at 3; American Petroleum Institute ("API") at 5; AT&T Wireless, Inc. ("AT&T") at 1-3; Western Wireless Corporation ("Western Wireless") at 2; DCR Communications, Inc. ("DCR") at 2,4; Omnipoint Communications, Inc. ("Omnipoint") at 1, U.S. Airwaves Inc. ("U.S. Airwaves") at 1-2.

industry. Subsequent licensees should not be forced to subsidize this advantage by being compelled to make reimbursements under the Commission's proposed cost sharing plan (the "Plan") for premiums paid by the initial relocators. In order to reduce the unreasonably high relocation demands from incumbents, GO continues to support replacing the two-year voluntary negotiating period with a mandatory one-year negotiating period during which the parties are required to negotiate in good faith.

## **I. MICROWAVE RELOCATION COST SHARING PLAN**

### **A. Depreciation Should be Calculated From a Uniform Date for all Relocators**

GO notes that several other commenters suggest that the  $T_1$  variable of the cost sharing formula should be based upon a uniform date for all PCS licensees.<sup>2</sup> This would not only make the Plan easier to administer but would lower the reimbursement costs for subsequent PCS licensees.<sup>3</sup> This is fair and equitable for two reasons. First, subsequent licensees such as GO have been delayed in entering the PCS market and should therefore have lower relocation costs than the initial relocators. Second, many subsequent licensees will be small companies and entrepreneurs such as GO who can not afford to expend large sums on microwave relocation. By reducing the financial burden on these companies, the Commission will be acting consistently with its own and Congress' goals of encouraging the participation of small businesses and entrepreneur's in the PCS industry.<sup>4</sup>

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<sup>2</sup> U.S. Airwaves Comments at 3; Omnipoint Comments at 3.

<sup>3</sup> U.S. Airwaves Comments at 3

<sup>4</sup> See 47 U.S.C. § 309 (j)(3)(B) (directing the Commission to promote economic opportunity for small businesses and).

As noted by U.S. Airwaves, basing the  $T_1$  variable on a uniform date would also allow subsequent licensees to more accurately estimate their relocation costs.<sup>5</sup> In the NPRM, the Commission concluded that the initial relocater should always pay the largest portion of the cost of relocation.<sup>6</sup> Basing the  $T_1$  variable on a uniform date for all PCS licensees would ensure that the initial relocater would pay the largest portion of these costs.

**B. Only Actual Relocation Costs Should be Reimbursable**

“Premiums” or “incentives” paid by initial relocators to incumbents above and beyond the actual costs of relocating incumbents to comparable facilities should not be reimbursable costs under the Plan. As noted, these payments will often be made by PCS licensees eager to be the first to market in their regions.<sup>7</sup> Subsequent licensees receive no such benefit of being the first to market and should not have to reimburse those licensees receiving such a benefit.

Many PCS licensees and potential PCS licensees agreed that only actual relocation costs should be reimbursable under the Plan.<sup>8</sup> Potential C block PCS licensees agreed that premium costs paid by relocators should not be reimbursable under the plan. DCR argues that “subsequent licensees who did not enjoy the benefit of early relocation should not be forced to pay for it.”<sup>9</sup> Omnipoint states that the “relocator engaged in voluntary negotiations undoubtedly

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<sup>5</sup> Id.

<sup>6</sup> NPRM at ¶ 31. DCR Comments at 3-4.

<sup>7</sup> As described in its comments and in Section II of this Reply, GO supports replacing the two-year voluntary negotiating period with a one-year mandatory negotiating period. This would curb many of the abuses currently occurring as incumbents seek to exploit the two-year voluntary period by making excessive demands on PCS relocators seeking rapid relocation.

<sup>8</sup> DCR Comments at 4-5; Omnipoint Comments at 4-6; U.S. Airwaves at 4; Sprint Telecommunications Venture (“Sprint”) Comments at 27 (Sprint suggests a soft cap under which relocation costs defined as premiums would not be reimbursable where they would cause the reimbursement cap to be exceeded); Pacific Bell Mobile Services Comments at 3.

will have business incentives to offer the incumbent more than simple relocation costs in order to induce the incumbent to move quickly and voluntarily. . . . However, the headstart effectively bought by the relocater through the premium payment should not be borne by the relocater's subsequent PCS competitors."<sup>10</sup> GO agrees with these commenters and urges the Commission to provide for reimbursement of actual costs of relocation only in the final cost sharing plan.

**C. The Reimbursement Cap for Microwave Relocation Should be \$250,000**

Nearly every PCS licensee or potential licensee generally supported the \$250,000 per link reimbursement cap (the "Cap") proposed by the Commission. Several A and B Block PCS licensees argue for a "soft" cap. AT&T Wireless suggests that any costs under and up to the Cap be considered per se reasonable and that costs above the Cap would be reimbursable if they are demonstrated to be necessary and reflect actual relocation costs.<sup>11</sup> Sprint also argues for a "soft" cap where if the actual costs of relocation exceeded the Cap, subsequent licensees would be required to reimburse the total actual costs.<sup>12</sup> These proposals are unacceptable to GO for two reasons. First, the reimbursement cap should be just that, a cap. Allowing for reimbursement above the level of the Cap would defeat one of its primary purposes: inducing initial relocators to negotiate fair and reasonable relocation agreements with microwave incumbents. If a soft cap is

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<sup>9</sup> DCR Comments at 4-5 (arguing against reimbursements for premiums).

<sup>10</sup> Omnipoint Comments at 5. *See also* BellSouth Comments at 5.

<sup>11</sup> AT&T Comments at 5, n. 11 (AT&T's proposal is based on a private relocation agreement between itself, Sprint Telecommunications Venture, GTE Service Corporation and PCS PrimeCo) Under this proposal, initial relocators would be able to effectively hide premium payments and pass a portion of these premiums on to subsequent licensees. This approach would also enable initial relocators to subsidize more expensive relocations by including relocation costs which exceeded the Cap in the reimbursement submittal of other less expensive relocations. It would not be surprising then if the initial relocators sought full reimbursement up to the Cap limit for each relocated link, regardless of the actual relocation costs.

<sup>12</sup> Sprint Comments at 27.

imposed, these initial relocators would have less incentive to keep relocation costs down because they would be assured of reimbursement for any costs exceeding the Cap which can be defined as actual costs of “comparable facilities”. As noted by Omnipoint, initial relocators may agree to pay for relocations which exceed the Commission’s proposed definition of “comparable facilities” in order to induce the incumbent to agree to rapid relocation.<sup>13</sup> Subsequent licensees should not be required to fund these excessive relocation costs.

The second reason that GO objects to these proposed modifications to the Cap is that GO believes it is equitable and fair to require initial relocators to pay for those costs of relocation, actual or not, which exceed the Cap. As noted elsewhere in this reply comment, these initial relocators enjoy a real benefit of being the first to market and are therefore willing to pay higher costs to quickly relocate incumbents than subsequent licensees are willing to pay. Even if the actual costs of relocating a few specific links are higher than the Cap limit, the initial relocator should be required to pay this difference.

Under Sprint’s proposal, subsequent licensees would also be required to reimburse any portion of premiums paid to microwave incumbents up to the Cap limit. For example, if a PCS relocator paid \$250,000 to an incumbent to relocate a link, \$150,000 of which was actual relocation costs and \$100,000 of which was a premium, subsequent licensees would be required to reimburse the entire \$250,000, including the premium.<sup>14</sup> This proposal is clearly unacceptable as it allows for the recovery of premium payments made by relocators to incumbents, payments which would provide GO’s future competitors the advantage of being first to market. GO cannot agree to subsidize its competitors in this manner.

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<sup>13</sup> Omnipoint Comments at 5.

<sup>14</sup> Id.

**D. A PCS Licensee Should be Required to Pay for Relocation Only if it Would Have Caused or Received Interference to the Relocated Link(s)**

Commenters expressed widely varying views as to what standard the Commission should adopt in determining whether a subsequent licensee has an obligation to reimburse the prior licensee who relocated the link(s). After reviewing the comments in this proceeding, GO urges the Commission to adopt a standard whereby subsequent PCS licensees would be required to reimburse for relocation of a microwave link only if it is shown that the link would have caused or received co-channel interference from the licensee's system.

AT&T Wireless, Sprint Telecommunications Venture, GTE Service Corporation and PCS PrimeCo advocate the use of a "proximity threshold" standard developed pursuant to a private relocation reimbursement agreement between them.<sup>15</sup> Under such a standard, a subsequent licensee would incur a cost-sharing obligation if one of its base stations is located inside of a geographic rectangle surrounding a relocated microwave link. If a subsequent licensee incurs a cost-sharing obligation for any single relocated link under this plan, it would also incur a cost-sharing obligation for the entire relocated network.<sup>16</sup> GO urges the Commission not to adopt the "proximity threshold" standard as it is overly broad in imposing reimbursement obligations solely on geographic location and would not be well-suited in determining the reimbursement obligations of C block licensees.

GO maintains that cost sharing obligations under the Plan should only arise for a subsequent licensee if such licensee's system would have caused interference to or received interference from a co-channel microwave system. This position is supported by other PCS licensees and potential licensees who wish to avoid spending their scarce capital on

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<sup>15</sup> See Comments of AT&T Wireless Services, Inc. at 7-9, Sprint at, GTE Service Corporation at 5-7, and PCS PrimeCo at 12-13, all advocating the "proximity threshold" standard.

<sup>16</sup> GTE Comments at 5.

reimbursement for the relocation of unnecessary links and or systems.<sup>17</sup> Western Wireless distinguishes between actual and potential interference and argues that reimbursement should be required only for co-channel licensees within a particular area whose systems “actually interfere with the link in question”.<sup>18</sup> GO agrees that actual interference versus theoretical interference must be distinguished in order to lessen the financial burden on entrepreneurs and other subsequent PCS licensees. Subsequent licensees will likely be small companies and entrepreneurs like GO who will not be able to afford to pay for non existent, theoretical interference simply to make the Plan easier to administer.

Efforts to simplify the administration of cost sharing should not result in subsequent licensees having to pay for unnecessary relocations when such licensees can avoid interference. Carolina PCS I states that “within the cost-sharing scheme, prudent licensees should still benefit from such planning by exemption from any cost-sharing obligation when the system’s technical parameters demonstrate that no interference would have resulted.”<sup>19</sup> GO supports this position and asserts that this ability to “engineer around” a microwave incumbent may be thwarted if the Commission were to adopt the overly-inclusive alternatives proposed by several commenters.

## II. MODIFYING EXISTING RELOCATION GUIDELINES

### A. **The Voluntary Two-Year Negotiating Period Should be Replaced With a Mandatory One-Year Negotiating Period**

Abuses in the microwave relocation process were documented by several commenters. Western Wireless cites an example where the intransigent owner of one remaining microwave

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<sup>17</sup> U.S. Airwaves Comments at 3-4; Western Wireless Comments at 8; Carolina PCS I Comments at 3.

<sup>18</sup> Western Wireless Comments at 8 (emphasis in the original).

<sup>19</sup> Carolina PCS I Comments at 3.



link is forcing a delay in Western's offering PCS.<sup>20</sup> Omnipoint cites the outrageous conduct of Suffolk County, NY, demanding an \$18 million payment before it agrees to relocate.<sup>21</sup> PCIA cites other extreme abuses by microwave incumbents.<sup>22</sup> Such abuses will ultimately harm consumers who will have to wait longer and pay more for competitive wireless communications as a result of the abuses of some microwave incumbents.

In response to these abuses, many commenters urged the Commission to reevaluate the two-year voluntary and one-year mandatory negotiating periods for microwave relocation. AT&T suggests that the Commission reduce the voluntary negotiating period from two years to one and that the Commission require good faith negotiations at all times.<sup>23</sup> Western Wireless urges the Commission to shorten the voluntary period to one year, to require good faith dealings at all times and to impose even more stringent rules on the parties during the mandatory negotiation period.<sup>24</sup> Sprint suggests that the voluntary and mandatory negotiating periods be combined into one three year period during which the parties on both sides are required to negotiate in good faith.<sup>25</sup>

While these suggestions would help reduce the abuses currently occurring, GO believes that they do not go far enough. To compel incumbents to agree to relocate quickly and under reasonable terms, GO again urges the Commission to eliminate the two-year voluntary negotiation period. Currently, incumbents have nothing to lose by threatening to not relocate for

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<sup>20</sup> Western Wireless Comments at 12-13.

<sup>21</sup> Omnipoint Comments at 6.

<sup>22</sup> PCIA Comments at 2-8.

<sup>23</sup> AT&T Comments at 15.

<sup>24</sup> Western Wireless Comments at 11-12.

<sup>25</sup> Sprint Comments at 17-19.

up to three years in order to exact enormous sums from PCS relocators. Eliminating the two-year voluntary negotiating period would expedite the introduction of a competitive PCS industry and ensure that microwave relocation is accomplished in a manner which is fair to all parties involved.

### III. CONCLUSION

After reviewing the comments filed in this proceeding, GO is convinced that microwave relocation can be accomplished in a manner that is fair to all parties involved and which protects the interests of parties like GO who have no input in the initial relocation agreements between PCS licensees and microwave incumbents. Only the actual costs of relocation should be reimbursable under the Plan and these costs should be capped at \$250,000 per link (or \$400,000 if a tower is necessary) with no exceptions.. In order to curb the abuses of some incumbents, the Commission should follow the suggestion of several commenters, including GO, of eliminating the two-year voluntary negotiating period. This will help speed the development of a competitive wireless communications market and benefit consumers greatly.

Respectfully Submitted,

GO Communications Corporation

By:

A handwritten signature in dark ink, appearing to read "John A. Malloy", is written over a horizontal line.

John A. Malloy, Esq.

Vice President and

General Counsel

January 15, 1995

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